



Statement for the Record

of

**Dave Koenig, Vice President, Tax and Profitability,
National Restaurant Association**

for the hearing on

“Tax Reform and Charitable Contributions”

before the

**Committee on Ways and Means
U.S. House of Representatives**

Thursday, February 14, 2013



Chairman Camp, Ranking Member Levin, and members of the House Ways and Means Committee, thank you for the opportunity to submit this statement for the record on behalf of the National Restaurant Association (NRA). We applaud your commitment to pursue comprehensive tax reform and appreciate your willingness to consider our comments as they relate to the deduction for charitable contributions, and particularly, the importance of the enhanced deduction for donations of food inventory to qualified charitable organizations.

Since 1917, taxpayers have been allowed to deduct gifts to charitable and certain other nonprofit organizations. This deduction is intended to support the activities of private organizations that provide viable alternatives to direct government programs. The NRA urges the Committee to retain the itemized deduction for charitable contributions as you move forward with tax reform.

Moreover, the NRA also urges the retention of the enhanced charitable deduction for contributions of food inventory. This provision has been a critical tool in alleviating hunger. Without the provision, taxpayers would receive the same tax treatment for throwing out surplus food as they would for giving it to charity. The enhanced deduction is instrumental in continuing the public-private partnership that assists millions at risk of hunger by helping businesses offset the additional costs associated with distributing extra food. Lastly, the NRA urges that the temporary provision expanding the enhanced deduction for food donations to unincorporated taxpayers be made permanent. Permanent enactment of this improvement will end the ambiguity and uncertainty caused by repeated lapses and subsequent re-enactments that have made it extremely difficult for numerous small businesses to make the decision to donate food to our nation's hungry.

About the National Restaurant Association

The restaurant industry plays an important role in our economy by generating an estimated \$660 billion in annual sales, with an overall economic impact of more than \$1.7 trillion. It is one of nation's largest private employers, employing approximately 13.1 million people, representing nearly ten percent of the U.S. workforce. Moreover, the restaurant industry is an industry of small businesses. There are 980,000 restaurant and foodservice outlets in the United States. Seven out of ten restaurants are single-unit operators and over 90% of eating and drinking establishments have fewer than 50 employees. As the Committee considers comprehensive tax reform, the NRA and its vast network of business owners would be pleased to serve as a resource.

Enhanced Charitable Deduction for Food Donations

Under present law, a taxpayer's deduction for charitable contributions of inventory generally is limited to the taxpayer's basis (typically, cost) in the inventory. For certain contributions of inventory, like surplus food, C corporations may claim an enhanced deduction equal to the lesser of (1) basis plus one-half of the item's appreciation (*i.e.*, basis plus one-half of fair market value in excess of basis) or (2) two times basis. To be eligible for the enhanced deduction, the

contributed property generally must be inventory of the taxpayer, contributed to a charitable organization described in section 501(c)(3), and the donee must (1) use the property consistent with the donee's exempt purpose solely for the care of the ill, the needy, or infants, (2) not transfer the property in exchange for money, other property, or services, and (3) provide the taxpayer a written statement that the donee's use of the property will be consistent with such requirements.

Under a special temporary provision enacted in 2005, any taxpayer, whether or not a C corporation, engaged in a trade or business is eligible to claim the enhanced deduction for donations of food inventory. This temporary provision has been extended on a number of occasions and was most recently extended through December 31, 2013, as part of the *American Taxpayer Relief Act of 2012*.

Recommendation for Improving the Food Inventory Donation Provision

For one in six Americans, hunger is a reality. In 2011, 50.1 million Americans lived in food insecure households, including 33.5 million adults and 16.7 million children. At the same time, billions of pounds of food are wasted each year. America's restaurants give back to their communities in major ways, the most significant of which is through food donation. According to NRA research, 73 percent of restaurants donate food to individuals or charities.

The NRA strongly encourages its members to donate more food and has partnered with Food Donation Connection ("FDC") to strengthen this effort. Founded by a former restaurant executive, FDC serves as the liaison between the restaurants interested in donating food and the social service agencies adept at getting that food to people in need. FDC helps restaurants develop and implement programs designed to provide an alternative to discarding edible food, while capitalizing on the economic benefits of those donations through tax savings. Since 1992, FDC has helped facilitate the donation of over **210 million** pounds of food to non-profit hunger relief agencies.

The deduction for charitable donation of food inventory is a critical tool in alleviating hunger. Without the provision, taxpayers receive the same tax treatment for throwing out surplus food as they do for providing it to charity. The enhanced deduction instead encourages donating the food to charity by helping offset the costs associated with preserving, storing and transporting the extra food. Absent the enhanced deduction for the charitable donation of food inventory, these charities would be hard-pressed to meet critical demands, putting our nation's most vulnerable families at risk for hunger.

However, the impact of the deduction can be improved. For nearly 30 years since its inception in 1976, the tax deduction for contributions of food inventory was limited to C corporations. In 2005, the provision was temporarily expanded to include pass-through entities (i.e., Subchapter S corporations, limited liability companies). This temporary expansion has been extended on subsequent occasions. By allowing non-C corporations to take the same deduction, FDC has



reported significant increase in the amount in pounds of food donated by restaurant clients. Pounds of donated food doubled from 2006 to 2012. Making permanent the now-temporary component of the deduction would make it more effective, while advancing the objectives of providing taxpayers with simplicity and predictability.

Conclusion

The NRA urges retention of the itemized deduction for charitable giving and the enhanced deduction for donations of food inventory as the Committee considers tax reform. The NRA also urges Congress to make permanent the temporary provision allowing unincorporated small businesses the same enhanced deduction for food donations. Thank you for the opportunity to submit this statement on behalf of the NRA.